

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
William P. Frank
Donald D. Lewis
Four Times Square
New York, New York 10036
(212) 735-3000

Attorneys for Defendant Banca MB S.p.A.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AXION POWER INTERNATIONAL, INC., :
WILLIAM AND TRACY AHEARN, h/w, :
SALLY FONNER, and JAMES SMITH, M.D., :

Civil Action No. 07 CV 11493 (RWS)

Plaintiffs, :

- against - :

MERCATUS & PARTNERS, LTD., CARI :
MASI a/k/a CARY MASI, STEPHEN :
CEVOLO, BANCA MB S.p.A., and DWIGHT :
PARSCALE,

Defendants. :

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**NOTICE OF MOTION OF DEFENDANT
BANCA MB S.p.A. TO DISMISS THE AMENDED COMPLAINT**

PLEASE TAKE NOTICE that, upon the annexed Memorandum of Law in Support of its Motion to Dismiss the Amended Complaint; the accompanying Declaration of Donald D. Lewis, dated July 31, 2008; and all prior papers and proceedings herein, Defendant Banca MB S.p.A. will move this Court, before the Honorable Robert W. Sweet, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, on a date and at a time designated by the Court, for an Order dismissing the Amended Complaint

with prejudice pursuant to Fed. R. Civ. P. 12(b)(6) and Fed. R. Civ. P. 9(b), and for such other and further relief as this Court may deem just and proper.

Dated: New York, New York
July 31, 2008

/s/ William P. Frank

William P. Frank (William.Frank@skadden.com)

Donald D. Lewis (Donald.Lewis@skadden.com)

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MEAGHER & FLOM LLP

Four Times Square

New York, NY 10036

(212) 735-3000

Attorneys for Defendant Banca MB S.p.A.

To:

Alan S. Fellheimer
FELLHEIMER & EICHEN LLP
44 Wall Street, 12th Floor
New York, NY 10005
Phone: (212) 461-7142
Fax: (212) 461-2223

Attorneys for Plaintiffs

James A. Prestiano
THE LAW OFFICES OF
JAMES A. PRESTIANO, P.C.
631 Commack Road, Suite 2A
Commack, NY 11725
Phone: (631) 499-6000
Fax: (631) 499-6001

Attorneys for Dwight Parscale

Richard F. Horowitz
Evan R. Shusterman
HELLER, HOROWITZ & FEIT, P.C.
292 Madison Avenue
New York, NY 10017
Phone: (212) 685-7600
Fax: (212) 696-9459

Attorneys for Defendants Mercatus and Cevolo